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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10

11 OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN;
12 ELFEGO RODRIGUEZ; AND JAMAL
CHILDS,

13 Plaintiffs,

14 -vs-

15 BURBANK POLICE DEPARTMENT; CITY
16 OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE.

17 Defendants.
18

19 BURBANK POLICE DEPARTMENT; CITY
20 OF BURBANK,

21 Cross-Complainants,

22 -vs-

23 OMAR RODRIGUEZ, and Individual,

24 Cross- Defendant.
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CASE NO.: BC 414 602

Assigned to: Hon. Joanne B. O'Donnell, Judge
Dept. 37

Complaint Filed: May 28, 2009

PLAINTIFF'S SUPPLEMENTAL BRIEF RE
THE EXCLUSION OF EVIDENCE OR
ARGUMENT RELATING TO ANY EVENTS
OCCURRING AFTER THE FIRST AMENDED
COMPLAINT WAS FILED

TRIAL:

DATE: March 19, 2012

TIME: 10:00 a.m.

DEPT: 37

1 **I. COMPLAINTS ARISING AFTER THE? FILING OF A DFEH COMPLAINT ARE**
2 **ADMISSIBLE SO LONG AS THE NEW CLAIMS “MIGHT REASONABLY HAVE**
3 **BEEN EXPECTED TO GROW OUT OF THE CHARGE”**

4 Recently, in Nazir v. United Airlines, Inc. (2009) 178 Cal.App.4th 243 (“Nazir”), the Court
5 of Appeal discussed the permissible scope of a civil action for FEHA violations. Specifically, the
6 Nazir court adopted the following standard used to determine the permissible scope for civil actions
7 under title VII of the federal Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) after an employee
8 files an administrative complaint with the federal Equal Employment Opportunity Commission
9 (EEOC): “ ‘The administrative exhaustion requirement is satisfied if the allegations of the civil
10 action are within the scope of the EEOC charge, any EEOC investigation actually completed, or any
11 investigation that might reasonably have been expected to grow out of the charge. Thus, the judicial
12 complaint may encompass any discrimination “like and reasonably related to” the allegations of the
13 EEOC charge.’ ” (Nazir, at pp. 266–267, italics omitted, quoting Chin et al., Cal. Practice Guide:
14 Employment Litigation (The Rutter Group 2010) ¶ 16:195 et seq., p. 16-30 (rev. # 1, 2010).) (See
15 also, Wills v. Superior Court, 195 Cal. App. 4th 143, 154-155.) In the Nazir case, the court held that
16 the FEHA claims were susceptible to the same treatment as the federal claims. Id.

17 There is also well established authority for the proposition that the “relation-back doctrine
18 (is) applicable to administrative charges, such as employee complaints filed with the Department of
19 Fair Employment and Housing. See, e.g., Denny v. Universal City Studios, Inc. (1992) 10
20 Cal.App.4th 1226, 1232-34 (equitable exception to exhaustion requirement permitted plaintiff to
21 advance claims not included in administrative charge), disapproved on other grounds, City of
22 Moorepark v. Superior Court (1998) 18 Cal.4th 1143, 1156.

23 In the present case, the allegations of misconduct encompass claims “like and reasonably
24 related to the allegations in the (FEHA) charge.” The claims all relate to harassment based on
25 Plaintiff’s ethnicity. Plaintiff had complained of the specific allegations of harassment based on
26 ethnicity/race, identified in Defendant’s Motion in Limine No. 3, and little or no action was taken.
27 This is probative as to the issue of whether reasonable steps to prevent harassment under
28 Government Code § 12940 (j) and (k) have been met.

Furthermore, the evidence is also probative and admissible for the purpose of showing

1 Plaintiff's damages. Plaintiff maintains that his damages have continued through the date of trial,
2 and will argue for future damages, based on the Defendant's failure to take reasonable steps to
3 prevent harassment under Government Code § 12940 (j) and (k). To limit the evidence to that which
4 occurred prior to the filing of the First Amended Complaint would, as a matter of course, prevent
5 Plaintiff from presenting evidence of future damages. There is no authority which would allow for
6 such a ruling.

7 Accordingly, Plaintiff respectfully submits that evidence of harassment occurring after the
8 filing of the First Amended Complaint should properly be admissible, so long as it encompasses
9 claims "like and reasonably related to the allegations in the (FEHA) charge."

10 **II. ADMISSIONS MADE BY THE**
11 **BURBANK POLICE DEPARTMENT ARE ADMISSIBLE**

12 As is set forth in the attached Declaration of Steven Karagiosian, after Plaintiff filed his
13 oppositions to Defendants motions *in limine*, he learned that, after the operative complaint was filed,
14 the current Burbank Police Department brass interviewed him regarding allegations in the complaint,
15 investigated, and made findings regarding the conduct of the department. Such findings constitute
16 party admissions. There is no basis for excluding these findings, or any other admissions by
17 Defendant, simply because they were made after the complaint was filed.

18 This is but one example of why it would be inappropriate for this Court to issue a blanket
19 order prohibiting the admission of evidence of *any event* that occurred after the complaint was filed.
20 As another example, some post-filing events are relevant because they demonstrate the intent and
21 motivation of those involved in the pre-filing actions complained of in the complaint. In this action,
22 Plaintiff claims he was harassed by Defendant because of his ethnicity. Defendant's intent and
23 motivation are an element of such a claim. Post-filing events, including those specific events listed
24 in Defendant's motion, are relevant to Defendant's intent and motivation in doing the acts
25 complained of in the complaint.

26 Post-filing events are also relevant to the issue of the damages suffered by Plaintiff, which
27 have continued after the filing of the complaint. Such events are therefore relevant and admissible.

28 Defendant correctly states that evidence is relevant if it has a tendency to prove or disprove
any disputed fact that is of consequence to an action. It would be impossible for this Court to rule

1 ahead of time that no event occurring after the filing of the complaint could possibly be relevant to
2 the parties' intent and motivations in engaging in the conduct alleged in the complaint; the damages
3 suffered by Plaintiff as a result of those actions; or multiple other issues raised by the complaint.

4 Defendant's argument that it had no opportunity to conduct discovery regarding post filing
5 events is patently incorrect. Discovery was not limited to pre-filing events; and Defendant conducted
6 considerable discovery regarding post filing events.


7 In addition to evidence relevant to a party's intent, or showing damages, or constituting
8 admissions, there are numerous other ways in which post filing events could be relevant to issues
9 raised in a complaint. Therefore, Defendant's request for a blanket order should be denied, and the
10 Court should not rule on any particular evidence until it comes up during trial.

11 III. CONCLUSION

12 For all the foregoing reasons, and those set forth in Plaintiff's previously-filed opposition,
13 Plaintiff respectfully requests that Defendant's Motion to exclude evidence of wrongful acts taken by
14 Defendants after the filing of the First Amended Complaint be denied.

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16 DATED: March 19, 2012

LAW OFFICES OF RHEUBAN & GRESEN

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18 By: 
19 Solomon E. Gresen
20 Attorneys for Plaintiff, Steve Karagiosian

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